3126.

# SUPREME COURT OF THE UNITED STATES.

## No. 96.

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## SAMUEL DINSMAN, PLAINTIFF IN ERROR,

vs.

## CHARLES WILKES.

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IN ERROR TO THE CIRCUIT COURT, U. S., FOR THE DISTRICT OF COLUMBIA, HOLDEN IN AND FOR THE COUNTY OF WASHINGTON.

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DISTRICT OF COLUMBIA, *to wit:*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the third Monday of October, being the fifteenth day of the same month, in the year of our Lord one thousand eight hundred and forty-nine, and of the independence of the United States the seventy-fourth.

Present, the honorable William Cranch, chief judge; James S. Morsell and James Dunlop, associate judges; Richard Wallach, esqr., marshal; John A. Smith, clerk.

In the record of proceedings of the said court, among others, are the following, to wit:

SAMUEL DINSMAN
against
CHARLES WILKES.

Be it remembered, that heretofore, to wit, on the third Monday of October, in the year of our Lord one thousand eight hundred and forty-nine, the said Samuel Dinsman, by Henry May, esqr., filed in court here the mandate of the Supreme Court of the United States, in the words and of the tenor following, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the honorable the judges of the circuit court of the United States, for the District of Columbia, holden in and for the county of Washington, greeting:

Whereas lately, in the circuit court of the United States, for the District of Columbia, before you, or some of you, in a cause between Samuel Dinsman, plaintiff, and Charles Wilkes, defendant, the judgment of the said circuit court was in the following words, viz:

"Therefore it is considered by the court here, that the said plaintiff recover against the said defendant as well the sum of five hundred dollars, current money, his damages aforesaid by the jurors aforesaid in form aforesaid assessed, as the sum of dollars and cents, by the court here unto him on his assent adjudged for his costs and charges by him about his suit in this behalf laid out and expended; and the said defendant in mercy, and so forth;" as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States, by virtue of a writ of error agreeably to the act of Congress in such case made and provided, fully and at large appears; and whereas in the present term of December, in the year of our Lord one thousand eight hundred and forty-eight, the said cause came on to be heard before the said Supreme Court on the said transcript of the record, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court, that the judgment of the said circuit court in this cause be and the same is hereby reversed, with costs, and that the said defendant recover against the said plaintiff ninety-two dollars and thirty-seven cents, for his costs herein expended, and have execution therefor.

And it is further ordered, that this cause be, and the same is hereby, remanded to the said circuit court, to award a venire facias de novo, and to proceed with the new trial in conformity to the opinion of this court.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity to the opinion and judgment of this court, as according to right and justice and the laws of the United States ought to be had, the said writ of error notwithstanding.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and forty-eight.

*Cost of defendant.*

| | |
|---|---|
| Clerk, - - - - - | $72 37 |
| Attorney, - - - - - | 20 00 |
| | $92 37 |

Taxed by— WM. THOS. CARROLL,
*Clerk of the Supreme Court of the United States.*

And in pursuance of the said mandate came into court here, on the fourth Monday of March, in the year eighteen hundred and forty-nine, (being the regular term of the said court,) as well the said Samuel Dinsman, by Henry May, esq., his attorney, as the said Charles Wilkes, by Joseph H. Bradley, his attorney.

And it is agreed by the said attorneys, and in obedience to the mandate of the Supreme Court of the United States as aforesaid, that the original declaration filed in this cause is received and read here as the regular original declaration in the proceedings now had in said cause; which said declaration is in the words following, to wit:

In the circuit court of the District of Columbia, for Washington county.

DISTRICT OF COLUMBIA,
*Washington county, to wit:*

Charles Wilkes was attached to answer Samuel Dinsman in a plea of trespass vi et armis, &c., and thereupon the said Samuel, by Henry May, his attorney, complains for that the said Charles, heretofore, to wit, on the sixteenth day of November, in the year of our Lord one thousand eight hundred and forty, with force and arms, &c., made an

assault upon the said Samuel, in and on board of a certain ship or vessel called the Vincennes, then on the high seas, to wit, at the county aforesaid, and then and there seized and laid hold of the said Samuel, and without the license or consent, and against the will of the said Samuel, put and placed him, the said Samuel, into irons, and then and there maliciously and without any reasonable or probable cause whatsoever, kept and continued him, the said Samuel, so in irons and imprisonment as aforesaid, for a long space of time, to wit, for the space of five hours, then next following; and also then and there forced and compelled him, the said Samuel, so in irons and imprisonment as aforesaid, to go from and out of the said ship into and along divers public streets, to a certain fort or prison, situated and being in the town of Honolulu, in the island of Oahu, in parts beyond seas, to wit, at the county aforesaid; and then and there in the said fort, in irons as aforesaid, imprisoned the said Samuel, and kept and continued him, the said Samuel, in prison there in a close cell in said fort, so in irons as aforesaid, for a long space of time, to wit, for the space of fifteen days then next following, contrary to the laws of the United States, and against the will of the said Samuel; whereby the said Samuel suffered and underwent great pain, and was greatly exposed to disease and the attacks of vermin, and was deprived of his reasonable and necessary food and drink, and became sick and disordered and seriously injured in his bodily health and strength, and so continued for a long space of time, to wit, hitherto. And also for that the said Charles, heretofore, to wit, on the fourth day of December, in the year of our Lord one thousand eight hundred and forty, with force and arms, made another assault upon the said Samuel, in and on board of a certain ship or vessel called the Vincennes, then on the high seas, to wit, at the county aforesaid, and then and there with great force and violence, with a certain rope called a "cat-o'-nine tails," gave and struck the said Samuel a great many violent blows and strokes, on and about the back, neck, arms, legs, and divers other parts of his body. And, also, then and there, without the license or consent, and against the will of the said Samuel, put and placed him, the said Samuel, into irons; and then and there, without any reasonable or probable cause whatsoever, placed the said Samuel, so in irons and imprisonment as aforesaid, in a certain part of said ship called "the brig," and then and there kept and continued him, the said Samuel, so in irons and imprisonment as aforesaid, and stinted of his reasonable and necessary food and drink, for a long space of time, to wit, for the space of four days then next following, contrary to the laws of the United States, and against the will of the said Samuel; by means of which said several premises he, the said Samuel, was greatly hurt, bruised, and wounded, and became sick, sore, lame, and disordered, and so continued for a long space of time, to wit, hitherto; during all which time he, the said Samuel, suffered and underwent great pain and injury to his bodily health and strength.

And also for that the said Charles, on the seventh day of December, in the year of our Lord one thousand eight hundred and forty, with

force and arms, made another assault upon the said Samuel, in and on board of a certain ship or vessel called the Vincennes, then on the high seas, to wit, at the county aforesaid, and then and there with great force and violence, with a certain rope called a "cat-o'-nine tails," gave and struck the said Samuel a great many violent blows and strokes on and about his back, neck, arms, legs, and divers other parts of his body; and also then and there, and without *or* consent and against the will of the said Samuel, put and placed him, the said Samuel, into irons, and then and there, without any reasonable or probable cause whatsoever, placed the said Samuel, so in irons and imprisonment as aforesaid, in a certain part of said ship called "the brig," and in certain other parts of said ship, and then and there, in irons and imprisonment as aforesaid, and stinted of his reasonable and necessary food and drink, kept and detained him, the said Samuel, for a long space of time, to wit, for the space of one day, contrary to the laws of the United States, and against the will of the said Samuel, whereby he, the said Samuel, was greatly hurt, bruised, wounded, and disordered in his health, and so continued for a long space of time, to wit, hitherto.

And also for that the said Charles, heretofore, to wit, on the eighth day of December, in the year of our Lord one thousand eight hundred and forty, and on divers other days and times between that day and the first day of June, in the year one thousand eight hundred and forty-two, with force and arms, in and on board a certain ship or vessel called the Vincennes, and in and on board of a certain other vessel called the Porpoise, on the high seas, to wit, at the county aforesaid, made an assault on the said Samuel, and then and there imprisoned him, the said Samuel, and kept and detained him in prison there without any reasonable or probable cause whatsoever, for a long space of time, to wit, from the said eighth day of December to the said first day of June, contrary to the laws of the United States, and against the will of the said Samuel; and the said Charles other wrongs to the said Samuel then and there did, against the peace of the United States, and to the damage of the said Samuel of five thousand dollars ($5,000) current money; and therefore he brings his suit, &c.

H. MAY, *Att'y for pltff.*

John Doe and Richard Roe, pledges, &c.

And thereupon the said Samuel Dinsman, by his attorney aforesaid, prays that the said Charles Wilkes may answer to the declaration aforesaid in the plea aforesaid.

Whereupon it is ruled here, that the said Charles Wilkes answer to the declaration of the said Samuel in the plea aforesaid; and if the said Charles doth not answer to the declaration of the said Samuel in the plea aforesaid, judgment will be rendered against him by default.

And the said Charles, by his attorney aforesaid, defends the force and injury, when and so forth, and says, that he is not guilty thereof as the said Samuel above against him hath complained, and of this he

puts himself upon the country; and the said Samuel in like manner, and so forth.

Whereupon, for trying the issue aforesaid, it is ordered by the court here that a jury thereon appear before the court here, immediately, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c.

Whereupon, for trying the issue aforesaid, it is ordered by the court here that twenty persons be drawn by ballot from the panel of petit jurors returned by the marshal to the court here; and twenty persons being so drawn, and a list of their names being furnished each of the parties, and the counsel of the parties having each stricken out four persons from the lists, thereupon the remaining twelve persons being called, come, to wit, James Magee, George W. Strand, Washington Lewis, John W. Wade, Bushrod Reed, George M. Sothoron, James Crandle, John Suter, Robert Brooke, Jackson Edmonston, William F. Seymour, George Lamb, who being empannelled and sworn to say the truth in the premises, upon their oath do say, that the said Charles Wilkes is guilty of the charge whereof the said Samuel against him hath complained, and they find for Samuel Dinsman on the first count in the declaration, and assess the damage of the said Samuel, sustained by reason of the trespass aforesaid, to the sum of five hundred and fifty dollars.

Whereupon the said Samuel, by his said attorney, prays judgment against the said Charles of and upon the verdict aforesaid, by the jurors aforesaid, given in form aforesaid.

And the said Charles, by his said attorney, saith that the court here ought not to proceed to render judgment upon the said verdict against him, and prays that judgment against him, of and upon the said verdict by the jurors aforesaid in form aforesaid given, may be staid; and files in court here the following reasons, that is to say:

SAMUEL DINSMAN }
vs. }
CHARLES WILKES. }

Circuit court of the District of Columbia, for the county of Washington, March term, 1849.

Charles Wilkes, the defendant in the above entitled action, submits to the court, by his counsel, a motion for a new trial.

"First. Because the verdict of the jury in the said cause was against the law and the evidence.

"Second. Because he hath now discovered, as he verily believes, that Simeon A. Stearns, the sergeant commanding the marine guard of the ship Vincennes, at the time and times stated in the plaintiff's declaration; is living, and is now within the jurisdiction of the United States; and, at the time of the trial of said cause, this defendant had reason to believe, and did believe, that the said Stearns, if living, had gone out of the United States and to parts unknown; and he now verily believes

he can procure the testimony of said Simeon A. Stearns before the next term of this court, and by him he expects to prove the facts stated in his deposition hereto annexed.

"Third. Because, since the trial of the said cause, he hath discovered that he can prove by John G. Brown the facts stated in the deposition of said Brown hereto annexed; and, although he knew that said Brown would swear he had been in said fort while the plaintiff was confined therein, yet he did not know, nor could he learn, the facts to which he would testify.

"JOS. H. BRADLEY, *for Def't.*"

Whereupon, all and singular the premises being seen, and by the court here fully understood, and mature deliberation thereon being had; for that it appears to the court here that the verdict aforesaid be set aside and held entirely as void and of no force or effect, provided the said defendant pay to the plaintiff the costs of said trial, and that the issue aforesaid be tried anew by other jurors to be afresh empannelled.

Therefore, let a new jury thereupon appear before the court here, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c.; thereupon further process of and upon the premises aforesaid between the parties aforesaid, by consent of said parties, by their attorneys aforesaid, and by order of the court, is continued until the third Monday of October next.

And now, to wit, on the said third Monday of October, in the year eighteen hundred and forty-nine, comes again into the circuit court here, as well the said Samuel as the said Charles, by their attorneys aforesaid; whereupon, for the trying the issue aforesaid, it is ordered by the court here that twenty persons be drawn by ballot from the panel of petit jurors returned by the marshal to the court here; and twenty persons being so drawn, and a list of their names being furnished each of the parties, and the counsel of the parties having each stricken out four persons from the lists, thereupon the remaining twelve persons being called, come, to wit, Beniah Willet, Jonathan Prout, John Y. Young, Edw. H. Edelen, Jno. T. Lenman, Edw'd T. Brown, Zeb. W. Denham, Benjamin S. Bayly, John Agg, Richard Pettit, Presley Simpson, Reuben, B. Clark, who, being empannelled and sworn to say the truth in the premises, upon their oath do say, that he, the said Charles, is not guilty of the trespass in the declaration within specified, as the said Charles had within by pleading alleged.

Therefore it is considered by the court here, that the said plaintiff take nothing by his declaration aforesaid, but for his false complaint against the said defendant be in mercy, &c.; and that the said defendant go thereof without day.

And it is further considered by the court here that the said defendant recover against the said plaintiff the sum of dollars and cents for his costs and charges by him laid out and expended in

and about his defence in this behalf sustained, to the said defendant by the said court now here adjudged, &c.

*Memorandum.*

Before the jurors aforesaid retired from the bar of the court here, the said plaintiff, by his attorney aforesaid, filed in court here the following bills of exception, to wit:

DINSMAN
vs.
WILKES.

*Plaintiff's statement of evidence.*

Upon the trial of this case the plaintiff, to support the issues on his part joined, gave evidence tending to prove that he was a marine on the U. S. ship-of-war Vincennes, of which the defendant was captain.

That, on or about the 21st day of November, 1840, at Oahu, one of the Sandwich Islands, the plaintiff was, by order of the defendant, which order was given by the defendant to the first lieutenant of the said ship in these words, "if he will not go to duty, send him to the fort," imprisoned with irons upon his wrists, and sent out of said ship along and through the town of Honolulu, in said island, in the presence and sight of the natives inhabiting there, to a certain fort or prison of said town belonging to the king of said island, and there delivered into the custody of the native officers of said fort, and there confined till the second day of December, 1840; that the said order, so given by the defendant, was at the time accompanied, on the part of defendant, by the manifestation of excitement and passion, evidently towards the plaintiff; and that the defendant, at the time of giving said order, did not inquire from the first lieutenant, to whom he addressed himself, what was the state of discipline of said ship, and the means of confining the plaintiff therein. That at the time said plaintiff was sent to said fort, and during all the time that he was confined there, the said ship, and also the U. S. ship of war Peacock, which was a vessel of a squadron then under the command of the defendant, were lying in the harbor of said town and near to said fort, and that said ships were nearer together than said fort was to either of them; that before, at the time of, and during all the time of said imprisonment, the said ships were in a state of efficient discipline, and had other prisoners confined on board of them of the crews of said ships; and also that five of the crew of the U. S. schooner Flying Fish, another vessel of said squadron, were imprisoned on said ship Vincennes at that time; and also, that during all said imprisonment of plaintiff, the defendant securely kept and confined, without any difficulty, on said ship Vincennes, a savage captured chief of the Fejees, named Bendobe Abbo; he was allowed during the day to be free and at large on the deck of said vessel, and was not in irons. That there was not, either before or during said imprisonment of said plaintiff, any mutinous or insubordinate feeling, or spirit, or disposition thereto, on either of said ships,

and that the plaintiff could have been easily and without any difficulty, danger, or risk, or the necessity of practising any severity by such imprisonment on him, securely confined on either of said ships during all the time of his imprisonment in said fort; and the plaintiff gave evidence, by the log books of said ships, tending to prove that the discipline of said ships was efficient, and that the plaintiff could have been confined on them as aforesaid; and that the log book of said ship Vincennes was, by order of the defendant, daily sent into his cabin on said ship Vincennes, to be by him inspected; and further gave evidence that if any mutiny or insubordination, or disposition thereto, had been at any time manifested on said ships, it was the duty of the officers of said ships to report the same to the defendant; and that it was the duty of the defendant to inspect the state of discipline of said ships, and to enforce the complete efficiency thereof at all times among both officers and men. That it was his duty to attend personally to the health and comfort of the marines of his ship, to see that they were not ill treated. That the said ships had an appropriate place on board of them for the imprisonment of all and any of their crews and marines, called the "brig," and that the same was the usual and customary place of such imprisonment on said ships for the crews thereof; and that the same was a fit place of confinement, where the health and comfort of the prisoners were attended to, and the proper rations and clothing of the crew regularly supplied to them, according to the provision thereof by the Government of the United States, which was ample for their health, comfort, and cleanliness. That said ships were fully provided with irons and all the means and appliances for the most secure confinement of their prisoners; and that the marine guard of said ship Vincennes was larger, by three or four, than is the usual complement of such guard on vessels of her class. And the plaintiff further gave evidence, tending to prove that, during all the time of his imprisonment in said fort, he was confined with irons upon his arms and upon his legs, and was kept in a small cell of said fort, which was open in the roof or top to the weather, and had none other than the bare ground for a floor, upon which he was compelled to sleep without other covering or protection, either over or under him, than the clothes upon his person; that the plaintiff had no other way of reposing in said cell, either by sitting or laying down, than on the bare ground floor of the same; that while so imprisoned he was generally kept alone and separate from other persons. That the only food allowed or supplied to him during all his said imprisonment was supplied by the native officers of said fort; and that the same was a vegetable compound, prepared by said natives, called "t-aro," or "poe," and fish sun-dried or smoke-dried, but always uncooked. That said vegetable was sometimes supplied to plaintiff in a condition unpalatable and unwholesome, and that said course of diet on said fish was unwholesome; that a change of clothing, or any part thereof, was not supplied to plaintiff during said imprisonment. That the said cell was damp and dirty, and abounded in vermin, which infested the per-

son of the plaintiff. That his condition and appearance during said imprisonment was filthy and miserable. That no one attended to his wants or comforts in said fort but the native officers therein; and that the same were wholly neglected, otherwise than as aforesaid. That no one was sent from said squadron, or elsewhere, to attend to or see into the condition of the plaintiff, and nothing was sent from said squadron or elsewhere to alleviate his said condition. That said fort was the common prison for malefactors among said natives, and that they were capitally executed therein. That an armed guard was kept in and about said fort. That during the said imprisonment of plaintiff it frequently rained in said fort, and the general range of temperature was about seventy-five degrees of Fahrenheit's thermometer. That about the 2d December the plaintiff was, by order of the defendant, brought out of said fort, (the said ship Vincennes being then about to sail,) and in single irons was conveyed along said town, and in sight of its inhabitants, and conveyed aboard said ship, where he was afterwards, by order of the defendant, twice flogged with twelve stripes of the cat-o'-nine-tails, after which he fell sick. And it was further admitted on said trial that the general conduct and character of the plaintiff in said ship had been faithful, subordinate, and exemplary, and that his only offence was a refusal to do duty; and the same was not accompanied by any manifestation of insubordination or other disposition against his duty and the discipline of the service than his refusal to do duty as aforesaid, which refusal was made in a respectful and quiet manner; and that the same was done under the honest belief that his time of service as a marine was fully ended, and he had a right to his discharge from the said vessel and the service of the United States. And the plaintiff gave evidence that the defendant was living ashore during all the time of said imprisonment, near said fort, and that he occasionally went aboard said ship Vincennes, and that the sergeant of marines had communication and intercourse with the defendant on shore during said imprisonment.

*Agreement of counsel.*

It is agreed that, on the trial of this cause, either party has read and may read in the Supreme Court so much from the printed rules, regulations, and instructions for the naval service of the United States, prepared by the board of navy commissioners of the United States under the act of February, 1815, as evidence of the law applying to said squadron and its officers, as they respectively deem applicable to this case.

H. MAY, *for Plaintiff.*
JOS. H. BRADLEY, *for Def't.*

*First exception.*

DINSMAN
vs.
WILKES.

On the further trial of this cause, and after the aforegoing evidence was given on the part of the plaintiff, and which is made part hereof, the defendant, for the purpose of showing probable cause and the absence of malice, on his part offered to read in evidence the following paper marked A; (letter of Lieut. Emmons;) (vide agreement of counsel on page 48;) having first proved that the same was in the handwriting of Mr. Emmons, who was a lieutenant of said ship, and that the other signatures are genuine; which said paper being in the possession of the defendant, as an official paper, was produced on the trial by the defendant; to the admissibility of which said letter, the plaintiff, by his counsel, objected; but the court overruled the objection, and admitted the said paper to be read in evidence, to which the plaintiff excepts, and this his exception is signed, sealed, and enrolled, this 30th day of November, 1849.

W. CRANCH, [SEAL.]
JAS. S. MORSELL, [SEAL.]
JAS. DUNLOP. [SEAL.]

*Second bill of exceptions.*

DINSMAN vs. WILKES.

On the further trial of this cause, and after the evidence contained in the plaintiff's aforegoing exception and statement of evidence, and which is made part hereof, the defendant produced to the court two original records of the trial of Riley and Ward respectively, and proved the same to be originals; and offered to read to the jury so much of the said records as contains the charges, specifications, and finding of the court martial, as relates to mutinous conduct, as follows: (In Ward's case, vide page 38; in Riley's case, vide page 41.) In order to show the defendant had probable cause for, and to repel any presumption of malice arising from the fact of the imprisonment by the defendant of the plaintiff, as aforesaid, in the said fort. To all which said evidence the plaintiff, by his counsel, objects; and the court overrules the objection, and admits the same; whereupon the plaintiff prays an exception thereto; and that the court may sign and seal this his bill of exceptions, and cause the same to be enrolled according to the statute. All which is done this 30th November, 1849.

W. CRANCH, [SEAL.]
JAS. S. MORSELL, [SEAL.]
JAS. DUNLOP. [SEAL.]

*Third bill of exceptions.*

DINSMAN vs. WILKES.

On the further trial of this case, and after the evidence contained in the foregoing exceptions, made part hereof, and after the defendant had read to

the jury Lieut. Emmons's letter, and so much of the records of the court martial as stated in the aforegoing exception, the plaintiff to rebut the same, and for the purpose of showing the state of the discipline of the ship Peacock, at and about the time of committing the trespasses laid in the declaration, offered to ask Lieut. Walker, the first lieutenant of said ship, what was the general conduct and character of Riley, Ward, and Lewis aforesaid, for subordination and fidelity to duty, at the time of the holding of said court martial, and prior thereto, and during the time embraced in the charges against them as contained in the said letter of Lieut. Emmons; but the defendant objected thereto, and the court refused to allow the said question and evidence to be put and admitted; to which refusal the plaintiff excepts, and this his exception is signed, sealed, and enrolled, this 30th day of November, 1849.

W. CRANCH, [SEAL.]
JAS. S. MORSELL, [SEAL.]
JAS. DUNLOP. [SEAL.]

*Fourth bill of exceptions.*

DINSMAN
vs.
WILKES.

On the further trial of this cause, and after the evidence contained in the aforegoing exception, and made part hereof, and after the defendant had given evidence of particular instances of insubordination and misconduct among the crew of the said ship Vincennes, from the time of her arrival at Oahu, to the time of the imprisonment of the plaintiff, in order to prove that the discipline of the same was relaxed and impaired; and after the defendant had closed his evidence in chief, the plaintiff to rebut the same offered to read from the log-book of said ship, at a date after her said arrival, to wit, "that on the 16th day of October, 1840, at the said island, a certain Leo Weaver and Henry Waltham, two of the crew of said ship, were flogged thereon, the first with sixteen lashes, and the last with eighteen lashes, for desertion, insolence, and neglect of duty; and that the same did not appear by said log-book to have been done by the sentence of a court-martial; but the court refused said offered evidence, and the plaintiff excepts thereto, and this his exception is signed and sealed this 30th Nov., 1849.

JAS. S. MORSELL, [SEAL.]
JAS. DUNLOP. [SEAL.]

*Fifth bill of exceptions.*

DINSMAN
vs.
WILKES.

Upon the further trial of this case, and after the evidence contained in the aforegoing exceptions made part hereof had been given, and af-

ter the plaintiff and defendant had both closed their evidence in chief, and after the defendant had given evidence that he had, subsequent to the sailing of the said squadron, shown marks of favor to the plaintiff, and had promoted him to the rank of corporal, in order to repel any inferences of malice on his part towards the plaintiff; but the plaintiff offered evidence tending to prove that the defendant claimed his right to hold the plaintiff in the said squadron under and by virtue of an act of Congress, approved March 2, 1837, entitled "An act to provide for the enlistment of boys, &c." And further offered to prove that the defendant had failed, and refused to certify, as required by said act, by reason whereof the plaintiff had been and was denied the benefit of the additional pay, as is by said act provided. And the plaintiff offered this evidence to rebut that of the defendant, and to show a continuing malice on his part towards the plaintiff; but the court refused the said offered evidence, and the plaintiff excepts, and this his exception is signed and sealed this 30th Nov., 1849.

W. CRANCH, [SEAL.]
J. S. MORSELL, [SEAL.]
JAS. DUNLOP. [SEAL.]

*Sixth bill of exceptions.*

DINSMAN
vs.
WILKES.

On the further trial of this case, and after the evidence contained in the aforegoing exceptions, made part hereof, and after the evidence in chief on both sides had been closed, and after the defendant had given evidence to prove that at the time the plaintiff was confined in said fort there were merchant seamen of the United States confined there, for the purpose thereby of inferring a knowledge by the defendant that said fort was a proper place for the imprisonment of the plaintiff:

The plaintiff, by way of rebutting the same, offered evidence tending to prove that it was a general and uniform practice and custom in the naval service at the time aforesaid, and long before, as well established, to confine on the armed ships of the United States in any foreign port, any and all merchant seamen of the United States, who might there deserve such confinement by reason of their own ship or master not being able to confine them; which offered evidence the court refused, and the plaintiff excepts thereto, and this his exception sealed this 30th day of Nov., 1849.

W. CRANCH, [SEAL.]
J. S. MORSELL, [SEAL.]
JAS. DUNLOP. [SEAL.]

*Seventh bill of exceptions.*

DINSMAN
vs.
WILKES.

And thereupon the defendant, by his counsel, prayed the court to instruct the jury that—

If, from the whole evidence aforesaid, the jury shall find that the plaintiff being an enlisted marine, signed the paper as aforesaid, marked A,) the same being the contract to serve during the cruise,) the court instructs the jury he was thereby bound to serve in the exploring expedition till the ships returned to the United States; and

If they further find the defendant was the commander of that expedition, was lying with his squadron in the harbor of Honolulu, the ships were undergoing repairs, and refitting for the purpose of further prosecuting the objects of said expedition, and the commander and many of the officers on shore pursuing their investigations, that the discipline of said squadron was thereby greatly relaxed, and the defendant received such information as led him to believe, and he did believe, that the marines on board the said squadron were unwilling to serve out the said cruize, and would refuse to do duty, and require to be sent home at the respective periods they might think their original terms of enlistment expired; and after four of the marines on board the ship Vincennes, under the immediate command of defendant, had in fact refused to do duty, on the ground that the terms of their original enlistment had expired, the plaintiff in like manner refused on like grounds; then it was in the discretion of the defendant to confine said plaintiff in said squadron, or on said island, as he might deem best, for a few days, and until the squadron was ready to sail; and he is not responsible for confining the plaintiff on the island, (if the jury shall find he was confined there by the order of defendant,) notwithstanding they shall be of opinion that he might have been confined in the squadron.

And if the jury shall further find that the plaintiff was confined in the fort on the island, that said fort was the only public place of imprisonment on the island, was used by the consuls for the confinement of seamen, and by the authorities of the island for persons criminally charged, and for seamen who had deserted from the ships, and that seamen were shipped from said fort into said squadron; that the defendant refitted his ships, and brought the plaintiff on board, and sailed with all reasonable despatch; then it is not competent for the jury to infer malice or corrupt motive in the defendant in so ordering the plaintiff to be sent to said fort, if he would not go to duty; although the jury may be of opinion that he might have been kept safely, and with more comfort to said prisoner, on board said squadron; and in the absence of all proof that defendant gave any order as to the mode of his confinement of said plaintiff, or for denying him any comforts, or that he had any knowledge of the manner of said imprisonment, or of his being deprived of comforts, or of the circumstances of hardship stated in the evidence, it is not competent for the jury to infer malice or corrupt motive in the defendant, from the facts (if the jury shall find them so) that plaintiff was confined, and lodged, and fed as stated in the plaintiff's evidence; and without proof of malice the plaintiff is

not entitled to recover in this action. Which instruction the court gave as prayed, and the plaintiff, by his counsel, excepts thereto, and prays the court to sign and seal the same, and cause the same to be enrolled according to the statute, which is done accordingly this 30th November, 1849.

W. CRANCH, [SEAL.]
JAS. S. MORSELL, [SEAL.]
JAS. DUNLOP. [SEAL.]

*8th bill of exceptions.*

DINSMAN vs. WILKES.

On the further trial of this cause, and after the evidence contained in the foregoing statement of evidence and exceptions made part hereof; and after the whole evidence had been closed, and after the court had instructed the jury according to the prayer of the defendant as aforesaid, the plaintiff prayed the court to instruct the jury as follows:

First. If the jury believe from the whole evidence that the plaintiff was put and kept in the said fort by order of the defendant, then, notwithstanding the defendant had a right to put and keep him there, yet the motive with which the same was done is a question for the jury; and if the jury believe that such motive was founded either on malice, cruelty, or any species of oppression, then the defendant is liable therefor, and the jury may give such damages as upon the whole evidence they think the plaintiff ought to have.

Second. If the jury believe from the whole evidence aforesaid that the defendant was captain of the ship Vincennes, and that the said ship was in a state of sufficient discipline, and the plaintiff could have been securely confined thereon, with safety to said ship, the officers, and crew, at the time he was sent to said fort, and during the time he was confined therein, then it was the duty of the defendant to know the same, and the jury may presume he did know the same; and it is competent for them to infer therefrom that the defendant acted maliciously toward the plaintiff in confining him in said fort. And if the jury believe he was confined in said fort by order of the defendant, they may give such damages therefor as upon the whole evidence they think the plaintiff ought to have.

Third. If the jury believe from the whole evidence that the plaintiff was imprisoned in the said fort by order of the defendant, and that the defendant acted therein either from malice, cruelty, or any species of oppression, he is responsible therefor, and the jury may give such damages therefor as upon the whole evidence they think the plaintiff ought to have.

Fourth. If the jury believe from the whole evidence that the plaintiff was put and kept in the said fort by order of the defendant, and that the same was done through malice, or any species of oppression,

then the defendant is liable therefor, and the jury may give such damages as they think the plaintiff ought to have; notwithstanding the jury may find that the defendant considered the said fort to be a more proper and safe place of confinement than the vessels of said squadron.

Fifth. If the jury believe, from the whole evidence, that the plaintiff was imprisoned in the said fort by order of the defendant, and that the same was accompanied by malice on the part of the defendant, then the plaintiff is entitled to recover, and the jury may give such damages therefor as they think the plaintiff ought to have. Notwithstanding the jury may believe that, under all the circumstances, the said imprisonment was considered by the defendant to be with more propriety and safety than in the squadron.

Sixth. If the jury believe from the evidence that the plaintiff was put and kept in the said fort by order of the defendant, and are of opinion that there was no justifiable cause for the act; and are further of opinion, from the whole evidence, that the same was wantonly done by the defendant, with a wilful disregard of right or duty, and contrary to his own convictions of duty, as a mere exercise of power, without any sense of its being right, then it is competent for the jury to infer that the same was maliciously done; and if so done, the defendant is responsible, and the jury may give such damages therefor as, upon the whole evidence, they think the plaintiff ought to have.

Seventh. If the jury believe from the evidence that the plaintiff was confined in the said fort by order of the defendant, when he could, without any difficulty, have been confined on the said ship, and that he knew he could have so confined him; and that the plaintiff was, in said fort, subjected to cruel and barbarous treatment, and the defendant could have prevented the same, and it was his duty to prevent the same, and he did not interfere so to do; then it was competent for the jury to infer malice therefrom in the conduct of the defendant, and he is responsible therefor; and the jury may give such damages as upon the whole evidence they may think the plaintiff ought to have.

Eighth. If the jury believe from the evidence that the plaintiff was confined in the said fort by order of the defendant, in a small cell, with irons on his hands, arms, and legs, and, while so confined, was subjected to cruel, unusual, and barbarous treatment, which the defendant could have prevented, and which it was his duty to prevent; then it is competent for the jury to infer malice on the part of the defendant, and he is responsible therefor, and the plaintiff may recover in this action.

Which said prayers, and every and each of the same, the court refused to grant; to which refusal the plaintiff, by his counsel, excepts, and this his exception, signed, sealed, and enrolled, this 30th day of November, 1849.

W. CRANCH, [SEAL.]
JAS. S. MORSELL, [SEAL.]
JAS. DUNLOP. [SEAL.]

*Ninth bill of exceptions.*

DINSMAN vs. WILKES.

On the further trial of this cause the counsel for the plaintiff, in his summing up to the jury, having stated that the evidence, and the only evidence, on which he relied to shew the knowledge of the defendant of the severities alleged to have been practised on the plaintiff, by being imprisoned in the said fort, were, that the said ships, the Peacock and Vincennes, were in a good state of discipline, and the plaintiff might have been safely kept in one of them; that it was, by the rules and regulations of the navy, made the duty of the captain to look after the comfort of his men; that no articles of food or clothing were sent from said ship to said plaintiff while in said prison; that defendant and the sergeant of marines were on shore most of the time while the plaintiff was so imprisoned, and the facts and circumstances of said imprisonment itself, as stated in plaintiff's evidence; the defendant, by his counsel, prayed the court to instruct the jury that from the said evidence, if the same is believed by the jury, it is not competent for them to find that defendant had knowledge of the severities said to have been practised on the said plaintiff in said prison, and without such knowledge the plaintiff is not entitled to recover in this action.

Which instruction the court gave, and the plaintiff excepts thereto; and so excepting to the granting of the same, the plaintiff denies that the same sets forth the whole evidence on which he relied, as proving the malice of the defendant, or his knowledge of the treatment of the plaintiff during all his said imprisonment, and at the commencement, continuation, and end thereof; and he excepts to said instruction on said grounds, and all other grounds to which the same may be liable, and this his exception is signed, sealed, and enrolled, this 30th November, 1849.

W. CRANCH, [SEAL.]
JAS. S. MORSELL, [SEAL.]
JAS. DUNLOP. [SEAL.]

*Tenth bill of exceptions.*

DINSMAN vs. WILKES.

On the further trial of this case, and after the plaintiff's counsel had summed up to the jury, and the court had, after such summing up, granted the defendant's prayer, marked P, the plaintiff prayed the court further to instruct the jury as follows:

That, from the whole evidence aforesaid, it is a matter of fact for the jury to find whether the said whipping of the plaintiff was immoderate, excessive, and malicious, on the part of the defendant, under all the circumstances.

That, upon the whole evidence aforesaid, if believed, it is competent

for the jury to find that the defendant did, unwarrantably and maliciously, imprison the plaintiff in the said prison or fort.

That, upon the whole evidence aforesaid, if believed, it is competent for the jury to find that the defendant wilfully neglected the personal comfort and cleanliness of the plaintiff while imprisoned by his order in the said fort; and if the jury shall find such wilful neglect, then the defendant is liable to this action; provided the jury shall further find that, while so imprisoned, the condition of the plaintiff was uncomfortable, wretched, and filthy, and his food unwholesome and unpalatable.

Upon the whole evidence aforesaid, if believed, it is competent for the jury to find, that the imprisonment of the plaintiff in said fort was unnecessary and unjustifiable by the exigencies of the case; and that, in ordering said imprisonment, the defendant was actuated by malice, and an unlawful desire of punishing the plaintiff cruelly and immoderately.

That from the whole evidenced, if believed by the jury, it is competent for them to find that the defendant wilfully neglected to bestow proper attention to the health, comfort, and cleanliness of the plaintiff while imprisoned in said fort; and such wilful neglect, if found by the jury, amounted in law to express malice on the part of the *plaintiff*.

That it is competent for the jury, from the whole evidence, aforesaid if believed by them, to find that the imprisonment of the plaintiff, as stated in the evidence, in said fort, was longer than the exigency of the case required; and if the same shall be found by the jury, then the plaintiff is entitled to recover, provided the jury shall further find that the prolongation of such imprisonment was the result of malice on the part of the defendant towards the plaintiff.

If the jury find, from the whole evidence, that the plaintiff was placed in the said fort by order of the defendant, then the defendant was bound to know the kind of treatment to which the plaintiff was subjected by said imprisonment; and he cannot be presumed ignorant thereof, especially if the jury find that, during said imprisonment, the defendant neglected to make inquiry into the condition and treatment of the plaintiff.

That upon the whole evidence aforesaid, if believed by the jury, they shall find that the defendant, in all the acts complained of by the plaintiff, was actuated alone by an upright intention to maintain the discipline of his command and the interests of the service on which he was engaged, then the plaintiff is not entitled to recover; but if the jury shall find that said acts, or any of them, proceeded from, or were aggravated by, cruelty, malice, and oppression towards the plaintiff, then the plaintiff is entitled to recover.

Which instructions, and each and every of them, the court refused to give; to which refusal the plaintiff excepts, and this his exception is signed and sealed this 30th November, 1849.

W. CRANCH, [L. S.]
JAS. S. MORSELL, [L. S.]
JAS DUNLOP. [L. S.]

*11th bill of exceptions.*

DINSMAN vs. WILKES.

Upon the further trial of this cause, the plaintiff prayed the court to instruct the jury, that, upon the whole evidence aforesaid, if believed by the jury, it is competent for them to find a verdict for the plaintiff, and to assess such damages as they shall think, under the circumstances, the plaintiff is entitled to recover.

Which instructions the court refused to grant; to which refusal the plaintiff excepts, and this his exception, is signed sealed, and enrolled, this 30th day of November, 1849.

W. CRANCH, [L. S.]
JAS. S. MORSELL, [L. S.]
JAS. DUNLOP. [L. S.]

*Charges, specifications, and finding, in the case of Michael Ward, referred to in 2d bill of exceptions, on page* 21.

*Charge 1st.*

Wilful and unprovoked attack upon an officer of the navy of the United States.

*Specification.*

In this, that the said Michael Ward, a marine in the service of the United States, and attached to the U. S. ship Peacock, laying in the harbor of Papiti, island of Tahiti, did, on the 29th day of September, 1839, on or about the hour of 3 p. m., while on shore at said place, and in company with John Riley, a marine, also attached to said ship, without provocation, attack and beat with his fist A. M. Cisney, a master's mate in the navy of the United States, and at the time attached to said ship.

*Charge 2d.*

Wilful and unprovoked attack upon the captain's steward of the said U. S. ship Peacock.

In this, that the said Michael Ward, a marine in the service of the United States, and attached to the United States ship Peacock, laying in the harbor of Papiti, island of Tahiti, did, on or about the time above specified, while on shore at said place, and in company with said J. Riley, as before stated, force his way into a house where the said captain's steward, Paul Camell, had been carried by some friendly persons to administer to his wounds, and there, without provocation, and in a cowardly and brutal manner, commenced an attack on said Paul Camell, while in a wounded and bleeding state, beating him with his fist, until obliged to desist from the interference of third persons.

*Charge 4th.*

Disobedience of orders, and disrespect to his superior officer, being in the execution of his office.

*Specification.*

In this, that the said Michael Ward, a marine in the service of the United States, and attached to the U. S. ship Peacock, laying in Masman's bay, Port Jackson, did, on or about the time last specified, when brought upon the spar-deck of said ship to be punished for fighting, peremptorily refuse to obey the order of Lieutenant Emmons directing him to take off his jacket, and stand in the gangway, saying, "No, sir, I shall not;" or words to that effect.

*Charge 5th.*

Threatening personal violence to an officer of the navy of the United States.

*Specification.*

In this, that the said Michael Ward, a marine in the service of the United States, and attached to the U. S. ship Peacock, laying in Masman's bay, Port Jackson, did, on or about the time above specified, while in confinement, and under the charge of a sentry, raise his hand-irons, and in a menacing attitude shake them at the said Lieutenant Emmons, at the same time saying, "O, if I catch you on shore," "you damn'd," &c., or words several times uttered to that effect, thereby showing a wanton disregard for the rules and regulations for the better government of the navy of the United States, and, by his scandalous conduct, setting an example of insubordination dangerous to the interest of the service.

Respectfully submitted.

G. F. EMMONS,
*Lieutenant U. S. ship Peacock.*

CHARLES WILKES, esq.,
*Com'g Sur. & Ex. Expedition.*

*Finding of the court martial on the above charges and specifications.*

The court are of opinion that charge first is proved, and specification to first charge proved as far as it regards the unprovoked attack.

The second charge and specification being read, the court are of opinion that charge second and specification are not proved.

The fourth charge and specification being read, the court are of opinion that said fourth charge and specification are proved.

The fifth charge and specification being read, the court are of opinion that said fifth charge and specification are proved.

The court having found the prisoner guilty as aforesaid, do sentence him, the prisoner, Michael Ward, private marine on board the U. S. ship Peacock, to receive fifty lashes upon his bare back, in the usual manner, at such time and place as Charles Wilkes, esquire, the commander-in-chief of the squadron, may be pleased to direct.

WM. L. HUDSON,
*President.*

CADR. RINGGOLD,
*Lt. Comd't., U. S. N.*
OVERTON CARR,
*Lieut. U. S. N.*
ROBT. E. JOHNSON,
*Lt. U. S. N.*
JAMES ALDEN, *Lt.*
R. R. WALDEN,
*Judge advocate.*

*Charges, specifications, and finding of the court martial in the case of John Riley, mentioned in plaintiff's second bill of exceptions on page* 21.

Charges and specifications of charges preferred by Lieut. G. F. Emmons, of the navy of the United States, and attached to the U. S. ship Peacock, against John Riley, a mariner in the service of the United States, and belonging to said ship.

*Charge* 1*st.*

Wilful and unprovoked attack upon an officer of the navy of the United States.

*Specification.* In this, that the said John Riley, a marine in the service of the United States, and attached to the U. S. ship Peacock, while laying in the harbor of Papiti, island of Tahiti, did, on the 29th of September, 1839, on or about the hour of 3 p. m., while on shore at said place, and in company with Michael Ward, a marine also attached to said ship, without provocation, assault and beat with his fist, A. M. Cesney, a master's mate in the navy of the United States, and at the time attached to said ship; and otherwise abuse him by using provoking and reproachful words—called him "a son of a bitch, &c."

*Charge* 2*d.*

Wilful and unprovoked attack upon the captain's steward of the U. S. ship Peacock.

*Specification* 1st. In this, that said John Riley, a marine in the service of the United States, and attached to the U. S. ship Peacock, laying in the harbor of Papiti, island of Tahiti, did, on or about the time above specified, while on shore at said place, and in company with said Michael Ward, without provocation, attack and maltreat Paul Camell, at the time attached to said ship, and serving in the capacity of captain's steward, beating him unmercifully with his fist, and otherwise abuse him by using provoking and reproachful words.

*Specification* 2d. In this, that the said John Riley, a marine in the service of the United States, and attached to the U. S. ship Peacock, laying in the harbor of Papiti, island of Tahiti, did, on or about the time above specified, while on shore at said place, and in company

with said Michael Ward, force his way into a house where the said Paul Camell had been carried by some friendly persons to administer to his wounds, and there, in a cowardly and brutal manner, re-commence his attack upon said Paul Camell, kicking and otherwise abusing him, until he was obliged to desist from the interference of foreigners, who had, in the mean time, assembled on the spot.

*Charge* 3*d.*

Threatening the life of the captain's steward of the United States ship Peacock.

*Specification.* In this, that the said John Riley, a marine in the service of the United States, and attached to the U. S. ship Peacock, laying in the harbor of Papiti, island of Tahiti, did, on the 30th of September, 1839, while in confinement, and under the charge of a sentry on board of said ship, threaten to take the life of Paul Camell, captain's steward, should he, the said Riley, be punished for what he had already done, evidently referring to his (Riley's) attack upon said Paul Camell the day previous.

*Charge 5th.*

Disobedience of orders and contempt of his superiors, being in the execution of his office.

*Specification* 1*st.* In this, that the said John Riley, a marine in the service of the United States, and attached to the U. S. ship Peacock, laying in Masman's bay, did, on the morning of the 16th of March, 1840, while at the main-mast awaiting punishment for desertion, peremptorily refuse to obey the order of Lieutenant G. F. Emmons, directing him to stand in the gangway, in the words, viz. "You shall not punish me," or to that effect; he, the said lieutenant G. F. Emmons, being at the time officer of said ship's deck, and acting in strict conformity to the orders of W. L. Hudson, esqr., commanding said ship.

*Specification* 2*d.* In this, that the said John Riley, a marine in the service of the United States, and attached to the U. S. ship Peacock, laying in Masman's bay, Port Jackson, and on or about the time last specified, and while at the main-mast, as before stated, acknowledge that he had already deserved trial by a court martial, and in an insolent tone, demanded why he had not been tried before; and when being ordered below, under the charge of a corporal of marines, turned towards the said Lieut. Emmons, and in a contemptuous manner said, that he (Riley) was a better man than ever he (Lt. Emmons) was, although he (Lieut. Emmons) did wear an epaulette, or words to that effect.

*Specification* 3*d.* In this, that the said John Riley, a marine, in the service of the United States, and attached to the U. S. ship Peacock, laying in Masman's bay, did, on or about the time before specified, and while in confinement, under the charge of a sentry, curse the said Lieut.

Emmons, also the sentry on post, (Henry Crook,) calling them "damned sons of bitches," or something to that effect.

*Charge 6th.*

Threatening to take the life of an officer.

*Specification 1st.* In this, that he, the said John Riley, a marine, in the service of the United States, and attached to the U. S. ship Peacock, laying at Honolulu, Oahu, did, on the fourth of October, 1840, between the hours of meridian and 4 p. m., did, in different parts of said ship, in the presence as well as hearing of officers and men, threaten to take the life of Lieut. Emmons, and did frequently repeat the threat, entering into detail concerning his mode of executing it.

*Charge 7th.*

Mutinous and seditious conduct.

*Specification 1st.* In this, that he, the said John Riley, a marine in the service of the United States, and attached to the U. S. ship Peacock, laying at Honolulu, Oahu, did, on or about the time last specified, upon several occasions, disobey the orders of Lieut. G. F. Emmons, and by looks and gestures as well as words, treat with the utmost contempt his authority, he, the said John Riley, being evidently sane, and perfectly aware of all he said and done; thereby in several instances already enumerated, setting at defiance the authority of his superior; setting an example of insubordination dangerous to the service, and wholly disregarding the rules and regulations for the better government of the navy of the United States.

G. F. EMMONS, *Lieut.*

Honolulu, Oahu, Oct. 8th, 1840.

*Finding of the court martial on the above charges and specifications.*

The court, after mature deliberation upon the evidence before them, are of the opinion, that—

1. The first charge and specification are proved.
2. The second charge and specifications are not proved.
3. The third charge and specifications are not proved.
4. The fourth charge is not proved, but the specification of 4th charge is proved, so far as it charges the prisoner of being absent without leave at the time specified.
5. The fifth charge and specifications are proved.
6. The sixth charge and specifications are proved.
7. The seventh charge and specification are proved.

The court having found the prisoner, John Riley, private marine on board the U. S. ship Peacock, guilty as aforesaid, do sentence him to receive seventy-five lashes upon his bare back, with the cat-o'-nine-tails, at such time and place as the commander-in-chief may be pleased to

direct, and that he be further punished by dismissal from the service of the United States.

Members. { WM. L. HUDSON, *President*.
CADR. RINGGOLD, *Lieut com'dg*.
OVERTON CARR, *Lieutenant*.
ROBT. E. JOHNSON,
JAMES ALDEN, *Lieutenant*.
R. R. WALDEN, *Judge Advocate*.

*Agreement of counsel referred to, first bill of exceptions, page* 20.

DINSMAN vs. WILKES.

It is agreed that the letter of Lieut. Emmons, referred to in the 1st exception, having been mislaid, either party may, on its being discovered, furnish the original or a certified copy to the clerk of the Supreme Court, to be incorporated into the record.

JOS. H. BRADLEY,
HENRY MAY.

UNITED STATES OF AMERICA.

The President of the United States to the judges of the circuit court of the district of Columbia, sitting for the county of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you, or some of you, wherein Samuel Dinsman is plaintiff, and Charles Wilkes is defendant, a manifest error hath happened to the great damage of the said plaintiff, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in his behalf, do command you, if judgment be therein given, that under your hand distinctly and openly, you send the record and proceeding aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ; so that you have the same at Washington on the first Monday of December next, in said Supreme Court to be then and there held; and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right and according to the laws and custom of the United States should be done.

Witness the hon. Roger B. Taney, chief justice of said Supreme Court.

Issued this 17th day of March, 1850.

JOHN A. SMITH, *Clerk*.

United States of America, to Charles Wilkes, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, pursuant to a writ of error filed in the clerk's office of the circuit court of the district of Columbia, for the county of Washington, wherein Samuel Dinsman is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said Samuel Dinsman, in the said writ of error mentioned, and why speedy justice should not be done to the parties in this behalf.

Witness the hon. William Cranch, chief judge of the circuit court of the district of Columbia, this 24th day of April, 1850.

W. CRANCH.

Service acknowledged.

JOS. H. BRADLEY,
*Deft's attorney.*

*Copy appeal bond.*

Know all men by these presents, that we, Samuel Dinsman and Henry May, are held and firmly bound unto Charles Wilkes in the full and just sum of two hundred dollars, current money of the United States; to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly, and severally, firmly by these presents. Sealed with our seals, and dated this 17th day of March, 1850.

Whereas at a circuit court of the district of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the third Monday of October, in the year eighteen hundred and forty-nine, in a suit pending in the said court, wherein the said Samuel Dinsman was plaintiff, and the said Charles Wilkes was defendant, judgment was rendered against the said defendant; and he having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Charles Wilkes, citing and admonishing him to be and appear at a Supreme Court of United States, to be holden at Washington on the first Monday of December next:

Now the condition of the above obligation is such, that if the said Samuel Dinsman shall prosecute his writ with effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue.

SAMUEL DINSMAN,
By H. MAY, [SEAL.]
HENRY MAY, [SEAL.]

Signed, sealed, and delivered, in the presence of—
J. McL. HANSON.

Approved,

W. CRANCH.

April 24th, 1850.

3129.

And whereas afterwards, to wit, on the seventeenth day of March, in the year of our Lord eighteen hundred and fifty, the said plaintiff, by his attorney aforesaid, produced and filed in court here the United States writ for the correcting of errors of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington; and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereunto annexed, is hereby transmitted to the said Supreme Court accordingly.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, for the county aforesaid, this [SEAL.] tenth of May, in the year eighteen hundred and fifty.

JNO. A. SMITH, *Clerk*.